



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: June 2, 2008
To: Interested Person
From: Matt Wickstrom, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-116788 NU

GENERAL INFORMATION

Applicant: Josh Burgess
Burgess Services LLC
11042 SW 51st Ave
Portland OR 97219

Prospective Buyer: Duncan Roberts
8115 SW 4th Avenue
Portland, OR 97219

Site Address: 3838 SW BARBUR BLVD

Legal Description: EXC PT IN SW BARBUR BLVD LOT 3&4 BLOCK 167, CARUTHERS
ADD

Tax Account No.: R140915620
State ID No.: 1S1E10CB 00700
Quarter Section: 3429

Neighborhood: South Portland NA., contact Jim Davis at 503-248-9820
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592

Zoning: R1 (Residential 1,000)

Case Type: NU (Non-conforming Situation Review)
Procedure: Type II, an administrative decision with appeal to the Hearings Officer

Proposal:

The applicant proposes to change the use of this site from Vehicle Repair to Retail Sales and Service. Vehicle Repair is a prohibited use in the R1 zone; however, the applicant has documented non-conforming rights to this use by showing that it existed prior to the application of the current zoning and has continued over time without a lapse in operations of more than 3 years. Retail Sales and Service uses are also prohibited in the R1 zone; however, because the site has non-conforming rights to another prohibited use, the applicant may

request to reassign these rights to another use through a Non-conforming Situation Review. The prospective buyer intends to operate the site as a vehicle sales business specializing in Volvos. Staff has informed the applicant that this review may determine that change in use of the site is only appropriate as Vehicle Sales rather than all other allowed Retail Sales and Service uses.

The applicant proposes several measures to mitigate for the exterior display of vehicles which are part of a Vehicle Sales business. First, the applicant proposes to install a 2.5-foot deep landscaped strip and a 3.5-foot tall wrought iron fence along the front of the site to separate it from the SW Barbur Boulevard property line. The applicant also proposes to install a fence along a portion of the north and east property lines, landscape the northwest corner of the site and paint the exterior of the building to improve its appearance. The applicant requests a Nonconforming Situation Review to change the allowed nonconforming use of the site from Vehicle Repair to Retail Sales and Service.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are:

- 33.258.038 Documenting a Nonconforming Situation
- 33.258.080 B 1-3, Nonconforming Situation Review Approval Criteria

ANALYSIS

Site and Vicinity: The 7,200 square foot lot is located on SW Barbur Boulevard. It is currently developed with a single story commercial building with two garage bays and a canopy accessed from two curb cuts on SW Barbur Boulevard. The appearance of the building is similar to that of an older gas/service station. The site drops off very steeply to the east and a much lower portion of the site with several mature trees fronts on SW Water Avenue. Single-dwelling residences and attached houses are located across SW Water Avenue from that portion of the site. A pedestrian staircase is located in the public right-of-way to the south of the site. An apartment building is located to the north of the site. An existing chain link fence separates the site from the apartment building to the north. Residential development and landscaped portions of the public right-of-way are located to the west of the site across SW Barbur Boulevard.

Zoning: The site is zoned R1 (Residential 1,000). The R1 zone allows multi-dwelling residential development up to a maximum density of one unit per 1,000 square feet of site area, and requires a minimum density of one unit per 2,000 square feet for sites less than 10,000 square feet in area. Vehicle Repair and Retail Sales and Service uses are prohibited in the R1 zone; however, existing uses may remain provided documentation shows that the use existed prior to the establishment of the current zoning and the use has been maintained over time without any lapse of greater than 3 years. A request to change an existing non-conforming use to another prohibited use in the base zone may be made through a Non-conforming Situation Review.

Land Use History: City records indicate there are no relevant land use reviews for this site.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **April 30, 2008**. The following Bureaus have responded:

- The Site Development Section of BDS responded that on-site infiltration of stormwater is not recommended at this location; however, incidental use of newly landscaped areas for retention of stormwater would be acceptable (Exhibit E-1).
- The Bureau of Environmental Services responded with no objections to the proposed change of use at the site. The response notes that landscaping helps in reducing stormwater run-off by providing a permeable surface, which is encouraged by BES. The response suggests that the applicant plant native vegetation in the newly landscaped areas which not only filters

stormwater but is suited to the Portland climate and therefore needs less watering. BES notes that further development on the site would be subject to BES standards and requirements during the building plan review process (Exhibit E-2)

- The Life Safety Section of BDS responded with a recommendation that the applicant visit the Development Services Center to research the current Occupancy Classification and Building Code requirements associated with a possible change of occupancy, including but not limited to: seismic upgrades and system development fees (Exhibit E-3).
- The Development Review Section of Portland Transportation reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17 and for potential impacts upon transportation services. The response notes that the site only has vehicle access from SW Barbur Boulevard and according to the ITE 7th Edition Trip Generation manual, the change from automotive repair to automotive sales will result in a net reduction of vehicle trips to the site and the surrounding street system (Exhibit E-4).

The Fire, Water and Parks Bureaus responded with no concerns (Exhibit E-5).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on April 30, 2008. One written response has been received from two notified property owners in response to the proposal. The response notes that they are not opposed to the project but have some concerns. The first of which has to do with the ability to request a non-conforming situation review to “reassign” a use at the site when the previous use, vehicle repair, operated essentially as an auto detailing shop with limited hours (the respondents point out that this is likely why the business failed). The respondents state that the proposed vehicle sales use would operate differently than the vehicle repair use. The response states concern that “an ascending scale of new non-conforming uses at the site” would be permitted. They also state concern that noise from the operation will impact neighbors to the east and ask whether the building will be insulated to reduce noise. Finally, the respondents ask that consideration be given to limiting the hours of operation as part of the land use review.

Staff response: The Non-conforming Situation Review approval criteria requires that “with mitigation, there will be no net increase in overall detrimental impacts (over the impact of the last legal use or development) on the surrounding area”. Factors to be evaluated as part of the assessment of impacts include hours of operation, vehicle trips, noise, glare, dust, potential for litter and the amount, location and nature of outdoor displays, storage or activities. Similarity in use to the previous use is not evaluated as part of the approval criteria. Any proposal to locate a new prohibited use at the site would also require proper documentation of non-conforming rights, a Non-conforming Situation Review and the same approval criteria would need to be met. Although the owner of the previous use at the site may have elected to operate under limited hours, the Zoning Code allowed that use to operate at all hours except between 11 PM and 6 AM; however, this review considers information supplied regarding the actual hours of operation not the maximum allowed by the Zoning Code. The respondents’ remaining statements are addressed as part of the findings of this review.

ZONING CODE STANDARDS

33.258.038 Documenting a Nonconforming Situation.

The applicant must provide evidence to show that the situation was allowed when established and was maintained over time. If the applicant provides standard evidence from the list below, the Director of BDS will determine if the evidence is satisfactory. The Director of BDS will also determine, based on the evidence, what the current legal use is, using the definitions in Chapter 33.910 and the use categories in Chapter 33.920. If the applicant provides evidence other than the standard evidence listed below, a Determination of Legal Nonconforming Status is required. (See 33.258.075.)

- A. **Situation allowed when established.** Standard evidence that the situation was allowed when established is:
1. Building, land use, or development permits; or

2. Zoning codes or maps;

B. **Situation maintained over time.** Standard evidence that the use has been maintained over time is:

1. Utility bills;
2. Income tax records;
3. Business licenses;
4. Listings in telephone, business, or Polk directories;
5. Advertisements in dated publications;
6. Building, land use, or development permits;
7. Insurance policies;
8. Leases;
9. Dated aerial photos;
10. Insurance maps that identify use or development, such as Sanborn Maps; or
11. Land use and development inventories prepared by a government agency.

Staff Comment: The applicant has provided the following standard evidence to show that the Vehicle Repair use has been maintained (continued operation) over time since 1978 when the zoning applied to the site made the Vehicle Repair use non-conforming:

- A 2001 Documenting a Nonconforming Situation letter written by the Bureau of Development Services which verified that nonconforming Vehicle Repair use rights were established in 1978 and had continued over time until 2001;
- A 2004 yellow pages listing for Reflections Detail and Accessories under the Auto Detailing Section (auto detailing is considered Vehicle Repair per Section 33.920.270.C of the Portland Zoning Code);
- A 2005 Dex Media listing for Reflections Detail and Accessories; and
- A 2007-2008 Yellow Book listing for Reflections Detail and Accessories.

Based upon the above evidence, staff concludes that the nonconforming situation was allowed when established and has been maintained over time without a gap of more than 3 years. The requirement has been satisfied.

33.258.070.D Nonconforming Development – Development that must be brought into conformance.

The regulations of this subsection are divided into two types of situations, depending upon whether the use is also nonconforming or not. These regulations apply except where superseded by more specific regulations in the code.

1. Nonconforming development with a new nonconforming use or new nonconforming residential density. When there is a change to a different nonconforming use, or a change from a nonconforming nonresidential use to a nonconforming residential density, the following nonconforming development must be brought into compliance with the development standards that apply to the site (base, overlay, plan district, special use):

Staff Comment: The applicant is proposing to change the existing nonconforming commercial use on the site from one use category (Vehicle Repair) to another use category (Retail Sales and Service use, specifically Vehicle Sales). Therefore, nonconforming development must be brought into compliance with the base zone development standards of subsections 33.258.070.D.a. through i., below (the site is not within an overlay zone or plan district).

- a. Exterior display, storage, and work activity areas, including landscaping;

Staff Comment: The R1 zone does not have standards for exterior display, storage and work activities therefore this standard does not apply. However, as mitigation for potential impacts, the applicant will be required to provide additional landscaping and fencing on the site.

- b. Landscaped setbacks for surface parking and exterior development areas;

Staff Comment: The subject property will comply with this standard. Two parking spaces are shown on the attached site plan under the awning with a potential employee parking space in the garage. This standard is met.

- c. Pedestrian circulation systems, as set out in the pedestrian standards that apply to the site;

Staff Comment: Current development on the site does not meet this standard. As part of the required Zoning Permit, the applicant must show a 5-foot wide pedestrian connection between the Barbur Boulevard street frontage and the main entrance of the building. The connection must meet the standards of 33.120.255. With this condition, this standard is met.

- d. Bicycle parking by upgrading existing bicycle parking and providing additional spaces in order to comply with 33.266.220;

Staff Comment: Section 33.266.220 requires the provision of a minimum of 2 short-term bicycle parking spaces within 50 feet of the main entrance. No long-term bicycle parking is required because the building has less than 2,500 square feet of gross building area. An area beneath the awning provides adequate bicycle parking to meet the short-term requirements. This standard is met.

- e. Interior parking lot landscaping. See Subsection 33.730.130.D, Expiration of adjustments approved prior to March 16, 2001;

Staff Comment: Subsection e is not applicable because, pursuant to Zoning Code Section 33.266.130.G.3, interior parking lot landscaping is required for parking areas with more than 10 motor vehicle spaces. No exterior parking spaces are shown on the site plan, therefore no interior parking lot landscaping is required. This standard is met.

- f. Landscaping in existing building setbacks;

Staff Comment: Setbacks to the east of the building are landscaped to the required L1 standard. Areas of the site where vehicle display and parking are located are subject to different standards. This standard is met.

- g. Minimum landscaped area (where land is not used for structures, parking, or exterior improvements);

Staff Comment: The subject property complies with this standard. The site area is landscaped with trees and ground cover in areas not currently occupied by structures, parking or exterior improvements. This standard is met.

- h. Screening; and

Staff Comment: The screening requirements in the R1 zone apply to garbage and recycling collection areas and mechanical equipment. Garbage and recycling collection areas will be located indoors and no exterior mechanical equipment is proposed on the site; therefore no screening requirements apply. This standard is met.

- i. Paving of surface parking and exterior storage and display areas.

Staff Comment: The subject property complies with this standard. The existing parking area is already paved. This standard is met.

ZONING CODE APPROVAL CRITERIA

33.258.080.B Nonconforming Situation Review – Approval criteria.

The request will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met:

1. With mitigation measures, there will be no net increase in overall detrimental impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as:
 - a. The hours of operation;
 - b. Vehicle trips to the site and impact on surrounding on-street parking;
 - c. Noise, vibration, dust, odor, fumes, glare, and smoke;
 - d. Potential for increased litter; and
 - e. The amount, location, and nature of any outside displays, storage, or activities.

Findings: The cumulative effect of the proposed change of the nonconforming use from Vehicle Repair to Retail Sales and Service would result in a net increase in detrimental impacts primarily due to the potential for increased vehicle trips, noise, odor, the potential for litter and exterior activities. Certain Retail Sales and Service uses such as a coffee shop or restaurant involve a far greater number of vehicle trips to a site than a Vehicle Repair Use. These uses also could involve a significant increase in detrimental impacts associated with noise and the potential for litter. As a result and in consultation with the applicant, this review evaluates only the primary nature of the request which is to change the use of the site from a nonconforming Vehicle Repair use to Vehicle Sales. The cumulative effect of this proposed change of the use will result in no net increase in overall detrimental impacts on the surrounding area, because of the reasons which follow in the findings below. A condition of approval has been added which clarifies that this review only approves the change in use of the site from Vehicle Repair to Vehicle Sales, and no other Retail Sales and Service uses.

- a. Hours of operation. Information submitted by the applicant states that the Vehicle Repair business which formerly occupied the site operated between the approximate hours of 9 am to 6 pm Monday through Friday and 10 am to 5 pm on Saturdays. The applicant also points out that earlier use of the site in 2005 and 2006 which is still within the 3-year timeframe for maintaining nonconforming rights was more robust than later use of the site once it was leased to another service provider. Information submitted by neighbors states that “hours and week day operations” of the Vehicle Repair business were “sporadic and no business was conducted at night”. As neither estimates of the hours of operation include nighttime or Sunday hours, the applicant’s approximation of the hours of operation can be assumed to be consistent with the neighbors’.

The applicant has requested to expand the hours of allowed operation to between 8 am to 9 pm Monday through Sunday. This results in greater hours of operation than the previous use which potentially results in increased impacts. In order to allow for expanded hours of operation, it is necessary for this review to find that with mitigation other factors addressed in conjunction with the hours of operation will not result in a net increase in the overall detrimental impacts on the surrounding area. Information contained within the findings below shows that an increase in the hours of operation will not result in an increase in overall detrimental impacts because factors such as vehicle trips, noise, vibration and the potential for litter will decrease with a Vehicle Sales business. Some of the factors evaluated are mitigated through the proposal to add landscaping and a wooden fence.

Unless otherwise specified through a land use review, nonconforming uses in a residential zone may not expand their hours of operation into the period of 11 pm and 6 am and were limited to operating between 6 am and 11 pm. The previous Vehicle Repair business had the potential to operate under these hours but according to comments from the applicant and neighbors did not. Vehicle Sales operations occurring as early as 6 am or as late as 11 pm could detrimentally impact the surrounding area; therefore, a condition of approval has been added with this review which limits Vehicle Sales operations to between 8 am and 9 pm Monday through Sunday. These hours roughly correspond with summertime daylight

hours without allowing activities in the early morning or late evening. The applicant's narrative states that typical hours of operation would be between 9 am and 6 pm Monday through Friday and between 10 am and 5 pm on Saturdays so the hours of operation defined as part of this review should be considered the maximum hours allowed rather than the actual hours anticipated.

Based on the information above, this criterion is met.

b. Vehicle trips and on-street parking. As noted in the PDOT reviewer's response, the "change from automobile repair to automobile sales will result in a net reduction of vehicle trips to the site and the surrounding street system". Based on this information, the proposed Vehicle Sales use is expected to result in a net reduction in the number of vehicle trips and this criterion is met. The site does not have directly accessible on-street parking located on SW Barbur Boulevard; therefore, that portion of the criterion does not apply.

c. Noise, vibration, dust, odor, fumes, glare and smoke. Based on accounts from the applicant, neighbors and submitted evidence to document the nonconforming situation, the Vehicle Repair business primarily performed auto detailing. This type of work involves vacuums and power washing machinery which can result in a significant amount of noise and even some vibration. The proposed Vehicle Sales use may also perform some cleaning of vehicles which arrive at the site but to a much lesser extent than a business where that was a primary function. Noise associated with the sales activity should be minimal especially considering the location on SW Barbur Boulevard – a rather busy street which would mask some noise on-site. In addition, the applicant has proposed to construct a 6-foot tall wooden fence along the north property line and wrapping around a portion of the upper eastern portion of the site. The fence will help reduce noise impacts for the apartment building to the north and residents to the east. In order to ensure that the fence is constructed, a condition of approval has been added to this review.

The site is elevated about 20 to 40 feet above SW Water Street and the residents who live on that street should experience minimal impacts associated with noise. This evaluation considers that many mature trees are growing on the SW Water Avenue frontage of the site, the fence which is required to be constructed in the northeast portion of the site, the existing fence to the south of the building and the blank building wall which faces east. Neighbors requested that consideration be given to insulation of the east-facing wall of the building to further buffer any potential noise. Staff has determined that because most Vehicle Sales activity occurs outdoors and what activity does occur indoors is primarily related to paperwork, adding noise insulation within the east-facing wall would not result in a significant reduction to noise. Activities of Vehicle Sales businesses do not produce significant dust, odor, fumes, glare or smoke and therefore impacts associated with these factors should not increase as a result of the applicant's request. This criterion is met.

d. Potential for increased litter. The previous Vehicle Repair business primarily involved detailing automobiles which includes cleaning litter out of cars. This activity has a far greater potential for litter to accumulate than a Vehicle Sales business where litter would mostly be removed from vehicles before arriving on-site. Based on this information, the potential for litter associated with the Vehicle Sales use is less than that associated with the Vehicle Repair use. This criterion is met.

e. The amount, location, and nature of any outside displays, storage, or activities. The Vehicle Repair business involved storing vehicles on-site while they awaited detailing or repair. The proposed Vehicle Sales use will involve displaying vehicles on-site while they await sale. Based on this information the location and nature of outdoor display, storage or activities are expected to remain the same. The amount of exterior display will likely increase when compared with the previous Vehicle Repair use; however, proposed mitigation appropriately addresses this increase and any associated impacts. The site plan submitted by the applicant shows a 2.5-foot deep landscaped setback along the SW Barbur Boulevard frontage of the site. This area will be planted with landscaping and will also

include a 3.5-foot tall wrought iron fence. The landscaping and the fence will help soften the appearance of the displayed vehicles when viewed from SW Barbur Boulevard. In order to ensure that the landscaped setback, the fence and appropriate landscaping are installed a condition of approval has been added to this review. To further ensure a softened visual appearance of the vehicle display area, the condition specifies that the landscaped setback must be planted with a minimum of four low growing shrubs, four ornamental grasses and ground cover plants. In addition to the landscaped setback, the site plan shows a new landscaped area in the northwest corner of the site as well as a 6-foot tall wooden fence along most of the north property line which also wraps around a portion of the east side of the property. The additional landscaping will also help soften views of the displayed vehicles and the fence will provide neighboring residents with an attractive wooden structure to view rather than displayed vehicles. In order to ensure that landscaping is installed in the northwest corner of the site, a condition of approval has been added to this review. The condition specifies that a total of three low-growing shrubs, two ornamental grasses and ground cover plants must be installed in the landscaped area. Based on this information, this criterion is met.

2. If the nonconforming use is in an OS or R zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the OS or R zoned area. This is based on taking into account factors such as:
 - a. Building scale, placement, and facade;
 - b. Parking area placement;
 - c. Buffering and the potential loss of privacy to abutting residential uses; and
 - d. Lighting and signs.

Findings: No changes are proposed to the building scale, placement or façade of the building other than new exterior paint. Parking is proposed to be located under the awning with a possible employee parking space in one of the garage bays. A significant amount of buffering is required as part of this review as well. This includes a 2.5-foot deep landscaped area along the SW Barbur Boulevard frontage which will be planted with low shrubs, grasses and ground cover plants. A 3.5-foot tall wrought iron fence will also be placed within this landscaped area. This review also requires the applicant to landscape the northwest corner of the site and to construct a 6-foot tall wooden fence along most of the north property line and which wraps around a portion of the east side of the site. These measures should help to maintain the residential character of the site by buffering it from abutting and surrounding residential uses. No lighting or signs are proposed as part of this review. Any proposal to add or alter signs will be subject to Title 32 Signs. Based on this information, this criterion is met.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant proposes a Nonconforming Situation Review in association with plans to change the existing use of the site from Vehicle Repair to Vehicle Sales (Retail Sales and Service). As noted in this report, the request to change the use of the site to a general Retail Sales and Service use cannot meet the applicable approval criteria. However, also noted in this report, the request to change the existing use to a strictly Vehicle Sales use is able to meet the applicable approval criteria. Approval of this request is granted based on the decrease in overall detrimental impacts associated with the change in use to strictly Vehicle Sales and conditions of approval which require additional landscaping and fencing. With approval

requiring that the Zoning Permit drawings substantially conform with the attached site plan, the request meets the applicable criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of a Nonconforming Situation Review to convert an existing Vehicle Repair business to Vehicle Sales, per the approved site plan, Exhibit C-1, signed and dated May 30, 2008, subject to the following conditions:

- A. As part of the zoning permit application submittal, the following development-related conditions (B through G) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 08-116788 NU." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. As part of the required Zoning Permit, the applicant must show a 5-foot wide pedestrian connection between the Barbur Boulevard street frontage and the main entrance of the building. The connection must meet the standards of 33.120.255.
- C. Use of the site is only approved for Vehicle Sales, no other Retail Sales and Service uses are allowed unless approved through a new Nonconforming Situation Review or the applicable review at that time.
- D. Vehicle Sales operations may occur between the hours of 8 am and 9 pm Monday through Sunday.
- E. As part of the required Zoning permit, the applicant must show a 6-foot tall wooden fence constructed along the north and east sides of the upper portion of the site as shown on the attached site plan.
- F. As part of the required Zoning Permit, the applicant must show a 2.5-foot deep landscaped area along the SW Barbur Boulevard frontage of the site as shown on the attached site plan. A 3.5-foot tall wrought iron fence must be located within this setback. The setback must be planted with a minimum of four low growing shrubs and four ornamental grasses. Ground cover plants must be planted in the remaining area of the landscaped setback.
- G. As part of the required Zoning Permit, the applicant must show a landscaped area in the northwest corner of the site as shown on the attached site plan. This landscaped area must be planted with a minimum of three low-growing shrubs and two ornamental grasses. Ground cover plants must be planted in the remainder of the landscaped area.

Decision rendered by:  **on May 29, 2008**

By authority of the Director of the Bureau of Development Services

Decision mailed: June 2, 2008

Staff Planner: Matt Wickstrom

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on March 19, 2008, and was determined to be complete on April 25, 2008.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on March 19, 2008.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period.

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on June 16, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. Recognized neighborhood associations are not subject to the appeal fee. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days

of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **June 17, 2008 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

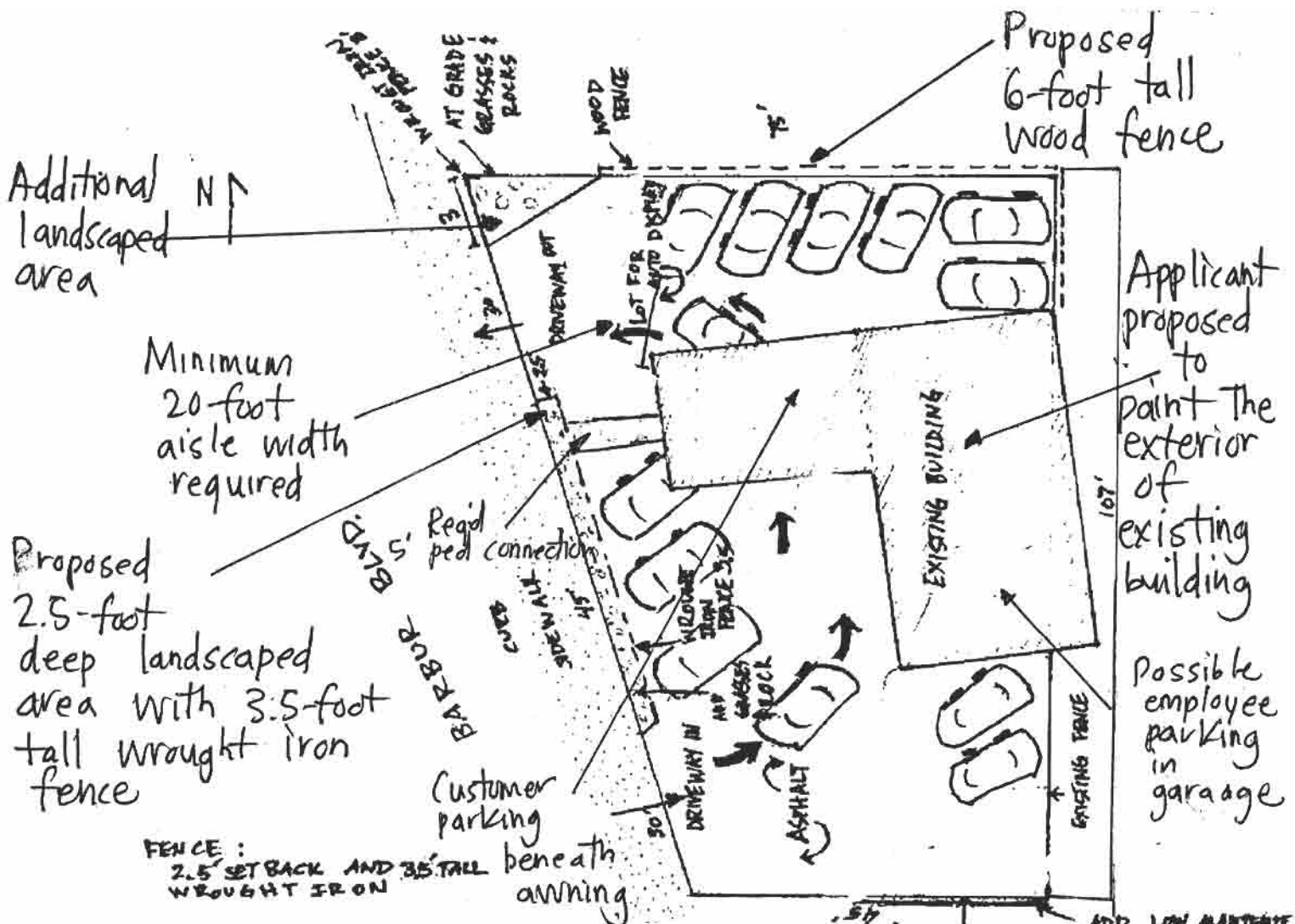
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement and Original LU Application
 - 1. Incomplete letter from Matt Wickstrom to Josh Burgess dated April 7, 2008
 - 2. Supplemental submittal received April 7, 2008
 - 3. Supplemental submittal received April 23, 2008
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Site Development Review Section of BDS
 - 2. Bureau of Environmental Services
 - 3. Life Safety Section of BDS
 - 4. Development Review Section of Portland Transportation
 - 5. Summary sheet of Bureau responses
- F. Correspondence:
 - 1. Larry Pound and Ellen West, May 21, 2008, concerns about some aspects of proposal
- G. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



FENCE:
2.5' SETBACK AND 3.5' TALL
WROUGHT IRON

LANDSCAPE:
VARIETY OF GRASSES
& ROCK W/ BARK DUST

Proposed Non-conforming situation review to change current use of site from Vehicle Repair to Retail Sales and Service (vehicle sales).

SITE PLAN FOR 3838 SW BARBUR BLVD
PORTLAND OR 97239

Detail of proposed wrought iron fence!

SCALE 1"=20'

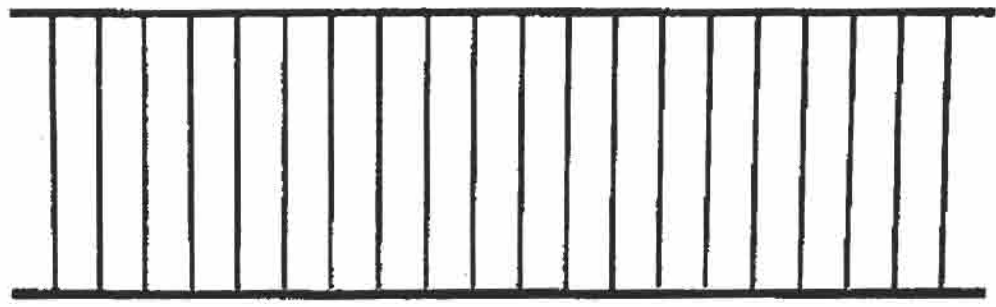


Exhibit C-1